IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/04/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.39356 OF 2002

C.P. Devasia,
S/o. Joseph Devasia .. Petitioner

Vs.

1. The Chairman and Managing Director,
Central Office,
Union Bank of India,
239, Vidhan Bhavan Marg,
Mumbai 400 021.

2. The General Manager (Persnl.,)
Competent Authority,
Central Office,
Union Bank of India,
239, Vidhan Bhavan Marg,
Mumbai 400 021. .. Respondents

Petition filed under Article 226 of the Constitution of India for
the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.T. Arulraj

For Respondents : Mr.D. Krishnan

:J U D G M E N T

The petitioner has prayed for issuing a writ of certiorarified
mandamus for quashing Ref.No.NRO:DP:235 dated 17.1.2001 and the consequential
relieving order dated 20.01.2001 and to direct the respondents to reinstate
the petitioner in service with backwages.

2. Even though it has not been specifically prayed for, in paragraph
9 of the affidavit, it has been stated as follows :-

9. I have no other alternative, efficacious and effective remedy

except to approach this Hon□ble Court under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus or any other appropriate writ, calling for the records relating to Ref: NRO: DP:235 dated 17.1.2001, set aside the order of retirement dated 17.1.20 01 and direct the respondents to reinstate me in service with back wages or to retire me from service with effect from 15.10.2001, granting me pension with back wages till that date. Hence this application is filed.

3. The facts giving rise to the present writ petition as culled out from the counter affidavit filed on behalf of the first respondent can be described in brief. The petitioner, who was an Ex-serviceman, joined as Clerk/Cashier under Union Bank of India on 15.10.1986. His date of birth is 29.6.1944 and in normal course he is to retire in July, 2004. The petitioner opted for a pension scheme when such scheme was made applicable. As per the Pension Regulations, which were applicable, pension would be payable on attaining the age of superannuation as per Regulation 28 and pension would be granted on voluntary retirement if the employee has completed 20 years of service as per Regulation 29. While the matter stood thus, the Voluntary Retirement Scheme 2000-2001 was introduced by the Bank. As per such scheme, the employees, who had completed 15 years of service or 40 years of age, were eligible to seek for voluntary retirement. As per clause (C) of the scheme, relating to other benefits, it was provided :
(C) Other Benefits :
a) . . .

b) . . .

OR

Own contribution of Provident Fund and Pension in terms of Union Bank of India (Employees□) Pension Regulations, 1995, in case of those who have opted for pension and have put in 20 completed years of service in the Bank.□

The petitioner filled up the required format seeking voluntary retirement. In the Form, Column 14 relates to pension option and towards that column, the petitioner has indicated Yes. Along with such form, which had been filled up by the petitioner, he had specifically submitted a representation in writing, wherein he had categorically indicated that he was in doubt as to whether his past service in Indian Air Force would be considered for the purpose of years of service. It was further stated :-

. . . In view of the above, I request your goodself to personally intervene for a better solution to my problems. My V.R.S. application may be accepted only if I could be given the pension as per the length of my service. I further, request you to re-consider full payment of ex-gratia amount.

I am very sure that the interests and needs of Ex-servicemen would be taken care of by the management.

In case, you feel Sir, that the solution to my problems is not in the

hands of our bank, you may return my application with necessary remarks and also permit me to approach Honourable Prime Minister for doing the needful within his discretionary power. . . . (Emphasis added)

The application for voluntary retirement along with the specific representation were forwarded by the Manager of the Branch, where the petitioner was working. The letter sent by the bank is to the following effect :-
. . . We refer to your circular letter No.NRO:DP:RK:3695-00 dt. 29 .11.2000 and we forward herewith the application along with a representation in duplicate submitted by Mr.C.P. DEVASIA, Clerk-Cum-Cashier on 7.12.2000 at 1.00 P.M. seeking Voluntary retirement for your kind perusal. We also confirm that the particulars furnished in the application was duly verified by us and are found correct. We recommend for considering the same favourably under Voluntary Retirement Scheme. . . .

Thereafter, by letter dated 17.1.2001, the petitioner was communicated regarding the acceptance of his application for voluntary retirement and it was further indicated that he was to be relieved with effect from 20.1.2001. The letter is to the following effect :-
. . . Mr.C.P. Devasia is hereby informed that his application dated 7.12.2000 seeking, Voluntary Retirement under Union Bank of India Voluntary Retirement Scheme 2000-2001 has been accepted by the competent authority w.e.f. 20.1.2001.

Accordingly, he stands relieved from the service of the Bank at the close of office hours on 20.1.2001.

Mr.C.P. Devasia is further informed that his Exgratia/retirement benefits will be paid in due course, after submission of claim forms/ application. However, the loans availed by him are to be adjusted immediately or else, it will be recovered from the amounts payable to him. . . .

Thereafter, a worksheet for sanction of pension was prepared by Memo dated 9.2.2001 and all the particulars were furnished. Subsequently, the petitioner made several representations indicating that even though he has received other benefits under the retirement scheme, the pension was yet to be granted. After several letters and representations written by the petitioner, he was intimated that he was not entitled to any pension. The petitioner thereafter immediately represented that either he should be reinstated in service or pension may be granted with effect from the date of completion of 15 years. Such request having been rejected, the present writ petition has been filed.

4. In the background of the aforesaid undisputed facts, the contention of the petitioner is to the effect that along with his application for voluntary retirement, he had filed a representation specifically requesting that his case for voluntary retirement should be considered only if he is found eligible for pension or otherwise the application may be returned.

5. The petitioner had specifically referred to the fact that he was an Ex-serviceman and would be eligible only if his past services would be counted. However, the application for voluntary retirement was a conditional in the sense that the petitioner had specifically made request that in case if he is not found eligible for pension after voluntary retirement, such application should be returned. At the time when the petitioner was allowed to retire, the communication sent by the respondents did not specifically indicate that the petitioner would not be entitled to any pension. On the other hand, it was indicated Mr.C.P. Devasia is further informed that his Exgratia/ retirment benefits will be paid in due course after submission of claim forms/application.. Long after submission of such claim forms and after several representations, the petitioner was intimated that he was not eligible for pension as he had not completed the required number of years.

6. It is not disputed that subsequently number of completed years regarding eligibility for pension and for voluntary retirement has been reduced to 15 years. Since the petitioner has made a conditional offer seeking voluntary retirement, it was open to the respondents to reject such offer. However, the authorities accepted the offer along with the pro-forma given by the petitioner. The petitioner had made request that his case of Voluntary Retirement should be accepted only if he is eligible for pension, otherwise his application may be returned. Since the authorities simply accepted such an offer made by the petitioner, it must be taken that the authorities had also accepted the prayer of the petitioner for payment of pension. It was not intimated immediately to the petitioner that he was not entitled to the pension. The subsequent action of the bank in refusing pension has caused grave prejudice to the petitioner for no fault of his. Since the authorities had accepted the offer for voluntary retirement on the footing that the petitioner would be entitled for pension, it would not be open to them turn around at the subsequent stage and state that the petitioner would not be entitled to such benefit. It is of course true that at the relevant time a person was required to complete 20 years to be eligible for pension on voluntary retirement. However, such period has been subsequently reduced. Since the petitioner has made a conditional offer, by acceptance of such offer without denying the benefit of pension at that stage, it must be taken that the bank had impliedly accepted the petitioner's condition possibly on the assumption that his past military services would be included.

7. While the writ petition was pending, counsel for the respondents had been directed to obtain instructions as to whether the bank was willing to reinstate the petitioner even without backwages. However, the

learned counsel on instructions has submitted that it is not possible to reinstate the petitioner as his offer for voluntary retirement has been accepted and some amount has already been paid.

8. Learned counsel appearing for the respondents has placed

reliance upon the decision reported in 2003(2) SCC 721 (BANK OF INDIA AND OTHERS v. O.P. SWARNAKAR AND OTHERS) and has contended that once offer for voluntary retirement was accepted and the benefits paid by the bank were accepted by the employee, there was no scope for the employee withdrawing from such voluntary retirement scheme. It is the contention of the petitioner that he had only made a conditional offer for retirement, provided he would get pensionary benefit. Therefore, the prime question is as to whether pensionary benefit is to be given or not. Even though prayer has been made for reinstatement in the writ petition, alternatively it has been contended that pension should be given which is evident from para 9 of the affidavit already quoted.

9. Having regard to all these aspects, I am inclined to allow the writ petition and give a direction that pension should be payable to the petitioner by considering that he had completed 15 years of service. Such pension should be paid from the date of this judgment.

10. In the result, the writ petition is allowed to the extent indicated above. No costs.

Index : Yes / No
Internet: Yes / No
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To

1. The Chairman and Managing Director,
Central Office,
Union Bank of India,
239, Vidhan Bhavan Marg,
Mumbai 400 021.

2. The General Manager (Persnl.,)
Competent Authority,
Central Office,
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